

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1369 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KASAM USUF BAVA

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioners
T.H.SOMPURA ADDL.GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 13/04/98

ORAL JUDGEMENT

Rule. Mr. Sompura, learned AGP waives the service of rule for and on behalf of the respondents. Both prays to hear this application today. Accordingly the application is heard today.

2. On 4th October, 1993, the competent authority, under the provisions of U.L.C.Act, passed the order,

whereby 1000 sq.mts. of land is held to be excess. The legality and validity of the said order was then called in question, preferring Civil Appeal No.24 of 1997 which came to be dismissed on 30th December, 1997. Being aggrieved by such orders, the present application under Art. 226 of the Constitution of India is preferred, wherein it is submitted that without affording any opportunity of being heard, the order in question has been passed. The same is, therefore, required to be quashed, etc.

3. It is the cardinal principle of law that no one can be condemned unheard. If the concerned party is not given opportunity to submit his case and the order is passed, the same would be illegal and would be liable to be quashed. In this case, the petitioner who resides in Burma appointed Parmanand Vaidyanath Shastri as his power of attorney. His power of attorney was appearing before the competent authority initially. Owing to his advanced age, he was not keeping well. His health was being deteriorated. He was not in a position of move out and appear before the competent authority, because of his ill-health. He, therefore, filed the application, the copy of which is produced at Annexure C, requesting the competent authority to inform the petitioner that he was unable to appear before him. He also submitted all the papers, he was having, to the competent authority. After presentation of the application dt. 22nd October, 1993, it appears that on 12/2/1995, the power of attorney holder of the petitioner died. The competent authority then issued the notice on the son of the power of attorney holder, though the power of attorney holder had, at the time of filing the above said application not only requested him to inform the petitioner, but had also handed over all the papers to him for doing needful in the matter. The son of the deceased power of attorney holder did not appear, because he had no authority to appear for and on behalf of the petitioner, and was not obliged to appear. The competent authority then proceeded in absence of the petitioner and passed the impugned order. The petitioner, having come to know about the order passed, preferred the appeal, but the appellate authority also turned down his appeal. There is no dispute about these facts on record. What follows from such fact is that the order in question is passed without affording opportunity to the petitioner and the petitioner is condemned unheard. After the application from the Power of Attorney Holder of the petitioner, the competent authority was bound to inform the petitioner, but he did not do so and proceeded to decide the matter. The petitioner was thus deprived of the opportunity to

submit his say. In appeal also, his case was not accepted. His appeal was dismissed. Thus the petitioner is condemned unheard which is contrary to law, rules of equity and principles of natural justice. The impugned order being illegal is liable to be set aside. The reasonable opportunity to submit is required to be given. After so doing, it will be open to the competent authority to pass appropriate order. In view of the matter, the application is required to be allowed.

4. For the aforesaid reason, the application is allowed. The order of the competent authority passed on 4th October, 1993, the copy of which is produced vide Annexure A, and the order passed by the appellate authority in Appeal No.24 of 1997 on 30th December, 1997 are hereby quashed and set aside. The notice dt. 3rd September, 1996, copy of which is produced vide Annexure: E and other consequential proceedings are also hereby quashed. The competent authority is directed to grant reasonable opportunity to the petitioner, and hear him or his power of attorney and pass the appropriate order in accordance with law.

5. The petitioner or his new power of attorney Abdul Rehaman Ahmedkarwa shall appear before the competent authority soon after the service of notice and shall co-operate for early disposal of the case. Rule accordingly made absolute.

Date: 13/4/1998. -----

(ccs)